IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 447 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MALAV MAHENDRA FADIA

Versus

A'BAD MUNICIPAL CORPORATION

Appearance:

1. Appeal from Order No. 447 of 1990

MR SB VAKIL for Petitioners No. 1-3

MR S TRIPATHY for Respondent No. 1 (absent)

MR PC KAVINA for Respondents No. 2-36 (absent)

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 08/11/2001

ORAL JUDGEMENT

Against the impugned order dated 27.9.1990 passed by the learned Trial Judge below application Ex.6 in Civil Suit No.4564/90 the appellants-plaintiffs have filed this appeal.

When the appellants-plaintiffs filed suit in 1990, initially, learned Trial Court ordered the parties to maintain status quo which was extended from time to time and finally application Ex.6 came to be partly allowed by the impugned order dated 27.9.1990 whereby the defendant Nos.2 to 36 and defendant Nos. 2 to 36 were also restrained from occupying the suit premises or carrying out any business in the said premises. Defendant No.1 was further restrained from granting Building Use Permission to respondent Nos. 2 to 36 till they are able to get the scheme varied by the Govt. Both the parties were also ordered to maintain statu quo till final disposal of the suit. Rest of the reliefs claimed in para 14 of the Ex.6 was not granted at that stage whereby a request was made by the plaintiffs to appoint received to immediately taking back the suit property or any part thereof from defendant Nos.2 to 36.

Initially, notice was ordered to be issued in this appeal and later on after hearing the other side same was admitted and ordered to be expedited on 30.11.1990. R & P of the suit was also called for. On Civil Application initially ad-interim relief was granted in terms of para 5(a) as stated at the bar by Ms.Archana Acharya appearing for Mr.S.B.Vakil for appellant. The same was ordered to be continued. While continuing interim relief it was ordered that the main Appeal from Order be tagged along with Special Civil Application No.5386/90 and other bunch of matters as soon as they are ready for final hearing. However, with the change in roaster the office has placed only this Appeal from Order along with Civil Application and not other writ petitions as ordered earlier on Civil Application by the learned single Judge of this court. Be that as it may.

It was stated at the bar by Ms.Acharya for the appellants that main suit is pending before the trial court. Considering the facts and circumstances of the case she submitted that main suit is an old suit of 1990. This appeal from order is pending before this court since last more than 11 years with interim relief granted in terms of para 5(a) on Civil application No.3235/90 in their favour, therefore, in the absence of other side this Appeal from Order is disposed of.

In the instant case, suit is old suit of 1990 and having regard to the peculiar facts and circumstances of the case and that this appeal is pending before this court since last more than 11 years with interim relief operating in their favour, the appellants-plaintiffs, I am of the considered opinion that this appeal can be disposed of without going into the legality and validity of the impugned order passed by the learned Trial Judge.

Accordingly, this appeal is disposed of with a direction to the learned Trial Judge to decide main Special Civil Suit No.4564/90 as early as possible and not later than 31.12.2002. The parties shall fully cooperate with the final disposal of the suit and they shall not ask for any unnecessary adjournments. Till then the interim relief granted earlier in terms of para 5(a) on Civil application No.3235/90 shall continue. No order as to costs. Civil Application is disposed of in terms of the order passed in main Appeal from Order.

(B.J.Shethna, J.)

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